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Labor Law -- Antitrust Liability of Labor Unions -- Clear Proof Standard of Norris-LaGuardia Act -- Ramsey v. United Mineworkers of America

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CASE NOTES

Labor Law—Antitrust Liability of Labor Unions—Clear Proof Standard of Norris-LaGuardia Act[1]—*Ramsey v. United Mine Workers of America.*[2]—Plaintiffs, small coal mine operators, sued defendant union and various major coal producers,[3] alleging a conspiracy to restrain trade in violation of Sections 1 and 2 of the Sherman Act.[4] Plaintiffs sought to show an express or implied agreement between the United Mine Workers of America (UMW) and the Bituminous Coal Operators Association (hereinafter Operators Association)[5] to impose provisions of the 1950 National Bituminous Coal Wage Agreement (hereinafter Wage Agreement)[6] on all coal mine operators, with knowledge that the smaller nonmechanized ones, plaintiffs included, would be unable to meet Wage Agreement terms and be driven out of business. Plaintiffs based their express-agreement claim upon a 1958 amendment to the Wage Agreement, the Protective Wage Clause (hereinafter Wage Clause),[7] and their implied-agreement claim upon the

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[1] 29 U.S.C. § 106 (1970).

[2] 401 U.S. 302 (1971).

[3] In the course of pre-trial procedure, all the defendants except the United Mine Workers of America were dropped from the case. A full listing and description of the parties plaintiff and defendant are given in Ramsey v. United Mine Workers of America, 265 F. Supp. 388, 392, 400-03 (E.D. Tenn. 1967).

[4] Section 1 provides that "[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . . ." 15 U.S.C. § 1 (1970). Section 2 provides that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor . . . ." 15 U.S.C. § 2 (1970).

[5] The Bituminous Coal Operators Association was formed in June, 1950, as a collective bargaining agency for coal mine operators. At one time a total of 262 coal companies were members of the agency, including both large and small companies. A comprehensive description of the Bituminous Coal Operators Association is provided in 265 F. Supp. at 407-08.

[6] The National Bituminous Coal Wage Agreement was originally adopted on March 5, 1950. Negotiations for the Agreement, the subject of intense national interest, were conducted under close supervision and pressure from the federal government. The Agreement was amended in 1951, 1952, 1955, 1956, and 1958. Id. at 406-08, 410.

[7] Paragraph A of the Protective Wage Clause provides that:

> During the period of this Contract, the United Mine Workers of America will not enter into, be a party to, nor will it permit any agreement or understanding covering any wages, hours, or other conditions of work applicable to employees covered by this Contract on any basis other than those specified in this Contract or any applicable District Contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this Contract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all the parties signatory thereto.

Id. at 411.

Wage Clause and subsequent activities of the UMW and major operators.[8]

The trial court dismissed the case for failure of proof, finding that the Wage Clause could not be construed to be an express commitment by the UMW not to bargain on terms other than the Wage Agreement.[9] The court also found that the plaintiffs had not satisfied the standard of "clear proof" required by Section 6 of the Norris-LaGuardia Act[10] with respect to the allegation of an implied agreement by the UMW to impose terms of the Wage Agreement on the smaller operators.[11] As regards the latter finding, the trial judge determined that, under the usual standard of proof applied in civil actions, the "preponderance of the evidence" standard,[12] a finding against the union would be required.[13] He apparently concluded, however, that section 6 requires clear proof that the alleged acts occurred, that the acts revealed a conspiracy, and that they had caused harm to the plaintiff.[14]

On appeal, the Sixth Circuit Court of Appeals reversed the decision of the lower court, finding error in the application of the clear proof standard.[15] The UMW, however, obtained a rehearing of the appeal. Sitting en banc, the Circuit Court of Appeals was evenly divided, thereby affirming the district court opinion.[16]

The Supreme Court granted certiorari[17] and, in reversing the decision of the Court of Appeals, HELD: Section 6 of the Norris-LaGuardia Act "requires clear and convincing evidence only as to the Union's authorization, participation in, or ratification of the acts allegedly performed on its behalf."[18] The Court ruled that in antitrust

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[8] These activities are discussed at p. 389 infra.

[9] The trial judge held that the language of Paragraph A of the Protective Wage Clause committed the union only to enforce the contract uniformly as between parties signatory to the contract. 265 F. Supp. at 411-12.

[10] Section 6 of the Act provides, in part, that:

> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

29 U.S.C. § 106 (1970).

[11] 265 F. Supp. at 432.

[12] "'[This] means that the inferences from the testimony are such as to persuade that the occurrence of an essential fact was *more likely or probable* than its non-occurrence'" (emphasis in original). Universe Tankships, Inc. v. Pyrate Tank Cleaners, Inc., 152 F. Supp. 903, 920 (1957).

[13] The trial court stated that "[w]ere this case being tried upon the usual preponderance of the evidence rule applicable in civil cases, the Court would conclude that the U.M.W. did so impliedly agree." 265 F. Supp. at 412.

[14] 401 U.S. at 307.

[15] Id.

[16] Ramsey v. United Mine Workers of America, 416 F.2d 655 (6th Cir. 1969).

[17] 397 U.S. 1006 (1970).

[18] 401 U.S. at 311.

actions instituted against labor unions, the standard of proof to be met for establishing the occurrence of illegal acts, or determining that the acts constitute a conspiracy, is the normal preponderance of the evidence standard utilized in civil actions. The Court noted that the consequences of affirming the lower courts' interpretation of section 6 would be to fashion a new standard of proof applicable in antitrust actions against labor unions.[19]

The Supreme Court's interpretation of Section 6 of the Norris-LaGuardia Act in *Ramsey* represents an attempt to resolve the ambiguities and doubts created by prior judicial determinations regarding the antitrust liability of labor unions. More specifically, the *Ramsey* interpretation clarifies the rule expressed by the Supreme Court in *United Mine Workers of America v. Pennington*[20] that "a labor union forfeits its exemption from antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units."[21]

This note will briefly examine the history of the national policy toward the labor movement as regards antitrust violations. The Court's holding in *Ramsey* will then be discussed in light of the *Pennington* decision and the legislative history and prior case law concerning Section 6 of the Norris-LaGuardia Act.

The first case to decide labor union liability for antitrust violations was *Loewe v. Lawlor*,[22] in which the Supreme Court held that the Sherman Act prohibited concerted labor activities as well as combinations of capital if the result was a restraint of trade. The resulting judgment caused damages in the amount of $240,000 to be levied against poor workers and their families. The Court reasoned that their membership in the union had made them parties to the conspiracy which the union was found to have perpetrated. The decision was met by a storm of public protest.[23] As a result, Congress, in 1914, enacted Sections 6 and 20 of the Clayton Act,[24] designed to protect labor unions from antitrust liability.

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[19] Id.

[20] 381 U.S. 657 (1965).

[21] Id. at 665.

[22] 208 U.S. 274 (1908).

[23] J. Williams, Labor Relations and the Law 36 (3d ed. 1965).

[24] Section 6 provides, in part:

> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor . . . organizations . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof . . . .

15 U.S.C. § 17 (1970).

Section 20 placed limitations on the granting of injunctions in labor disputes "unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application." The section further states that "no such restraining order or injunction shall prohibit any person or persons . . . from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means to do so . . . and for lawful purposes." 29 U.S.C. § 52 (1970).

In *Duplex Printing Press Co. v. Deering*,[25] however, the Supreme Court virtually ignored the national policy expressed in the Clayton Act and frustrated congressional purpose by narrowly interpreting Sections 6 and 20. In *Duplex* the Court granted an injunction against the International Association of Machinists, forbidding the union to pursue a policy of secondary boycotts and sympathetic strikes initiated as a result of complainant's refusal to permit organization of his plant. Justice Pitney, speaking for the majority, held that the Clayton Act did not bar an injunction in this case, partly because statutory language such as "peaceful" and "lawful" indicated that the statute dealt solely with conduct which would have been unlawful, even prior to enactment of the statute.[26]

The Court's ruling in *Duplex* was expanded in 1921 in *American Steel Foundries v. Tri-City Central Trades Council*.[27] In *Tri-City* the Court upheld an order enjoining the labor organization from picketing the employer's plant, declaring that a picket line consisting of more than one representative at each point of ingress and egress at the plant amounted to "intimidation," and that "persuasion or communication attempted in such a presence and under such conditions was anything but peaceable and lawful."[28]

In reaction to the Court's failure to effectuate the policy of the Clayton Act, Congress, in 1932, again expressed its desire to protect labor unions from antitrust liability through enactment of the Norris-LaGuardia Act.[29] The Act clearly limits the equity jurisdiction of federal courts in cases "growing out of a labor dispute,"[30] and defines a public policy designed to promote collective bargaining.[31]

The first major case dealing with labor union antitrust violations following enactment of the Norris-LaGuardia Act was *Apex Hosiery Co. v. Leader*.[32] In *Apex* the Court virtually ignored the Norris-LaGuardia Act, but did take a step toward fostering union organization and collective bargaining by holding that, since the acts of the union involved merely a local dispute between an employer and his employees, the Sherman Act did not restrict union activities unless they had or were intended to have an effect upon commercial competition. Furthermore, the Court held that even where commercial competition was affected by an otherwise lawful union activity, "this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act."[33]

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[25] 254 U.S. 443 (1921).
[26] Id. at 473-74.
[27] 257 U.S. 184 (1921).
[28] Id. at 205.
[29] 29 U.S.C. §§ 101-15 (1970).
[30] 29 U.S.C. § 101 (1970).
[31] 29 U.S.C. § 102 (1970).
[32] 310 U.S. 469 (1940).
[33] Id. at 503-04.

In *United States v. Hutcheson*,[34] the Supreme Court formally recognized and explained in detail the national policy toward labor unions as expressed in the Norris-LaGuardia Act. Speaking for the majority, Justice Frankfurter noted that the Norris-LaGuardia Act "explicitly formulated the 'public policy of the United States' in regard to the industrial conflict, and by its light established that the allowable area of union activity was not to be restricted, as it had been in the *Duplex* case, to an immediate employer-employee relation."[35] The Court then held that activities of a labor union, in light of Section 20 of the Clayton Act[36] and the Norris-LaGuardia Act, are exempt from antitrust prosecution, so long as the union "acts in its self-interest and does not combine with non-labor groups."[37]

Hutcheson was followed in 1945 by the decision in *Allen Bradley Co. v. Local No. 3, International Brotherhood of Electrical Workers*,[38] which permitted antitrust prosecution of the union. In the latter case the Court held that Congress did not intend to exempt from antitrust prosecution a labor union which acted in concert with non-labor groups with the purpose or intent of controlling prices or creating a monopoly. The rule drawn from *Hutcheson* and *Allen Bradley*, then, was that labor unions enjoyed virtual immunity from the antitrust laws so long as they acted unilaterally and in their own interests.[39]

The *Hutcheson-Allen Bradley* rule remained undisturbed until 1965,[40] when, in *United Mine Workers v. Pennington*,[41] the Supreme Court, while ostensibly supporting this rule, laid the groundwork for limiting labor's exemption and for facilitating the implication of a union-employer conspiracy to control the market. *Pennington*, which arose from a fact situation similar to that in *Ramsey*, expanded the *Allen Bradley* exception to labor's exemption by holding that "a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units."[42] The problem presented by *Pennington* was twofold: first, what quantum and quality of evidence is required to show that the union has so agreed with one set of employers; and second, can such an agreement be inferred from a body of evidence not showing intent to drive competitors out of business.[43] The answers

[34] 312 U.S. 219 (1941).

[35] Id. at 231.

[36] 29 U.S.C. § 52 (1970).

[37] 312 U.S. at 232.

[38] 325 U.S. 797 (1945).

[39] Zimmer and Silberman, Pennington and Jewel Tea: Antitrust Impact on Collective Bargaining, 11 Antitrust Bull. 857, 863 (1966).

[40] Id. at 863-64.

[41] 381 U.S. 657 (1965).

[42] Id. at 665.

[43] See Zimmer and Silberman, supra note 39, at 873-75; 265 F. Supp. at 398-99; Cox, Labor and the Antitrust Laws: Pennington and Jewel Tea, 46 B.U. L. Rev. 317, 322-23 (1966).

to these questions cannot easily be gleaned from the Court's opinions, since the Court was divided three ways in the case.[44]

Justice White, speaking for the *Pennington* Court, indicated that a union wage agreement with a multi-employer bargaining unit, followed by the union's pursuance of its own interest in seeking similar terms from other employers, without more was insufficient evidence to support a charge of conspiracy. He stated that "there must be additional direct or indirect evidence of the conspiracy."[45] But the opinion did not indicate what quantum or type of "additional evidence" must be produced or what evidentiary standard must be met. In a strong dissent to Justice White's opinion, Justice Goldberg expressed his fear that a jury would be permitted to infer an illegal conspiracy on the basis of the following factors: a wage agreement, an avowed union policy of aiming for an industry-wide uniform wage scale, and the removal of certain competing employers from the market as a result of their inability to meet the union's wage demands. He was especially concerned that the "additional evidence" required by Justice White would include bargaining table discussion regarding the effect of a wage increase on the competitive market.[46]

The question of whether it was necessary to show union intent to drive competitors of the allegedly conspiring employers out of business was also left in doubt by the *Pennington* decision. In his concurring opinion in *Pennington*, Justice Douglas felt that a predatory purpose must be shown on the part of the alleged conspirators in order to prove a Sherman Act violation.[47] Justice White's opinion, on the

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[44] Chief Justice Warren and Justice Brennan concurred in the majority opinion written by Justice White. 381 U.S. at 659-72. Justice Douglas was joined in his concurring opinion by Justices Black and Clark. Id. at 672-75. Justice Goldberg, joined by Justices Harlan and Stewart, dissented from the opinion but concurred in the result. Owing to the similarity of issues, Justice Goldberg's dissent in *Pennington* appears in his dissenting opinion in Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., Inc., 381 U.S. 676, 697-735 (1965).

[45] 381 U.S. at 665 n.2.

[46] Justice Goldberg specifically referred to the fact that:

> Since collective bargaining inevitably involves and requires discussion of the impact of the wage agreement reached with a particular employer or group of employers upon competing employers, the effect of the Court's decision will be to bar a basic element of collective bargaining from the conference room.

Id. at 714. See also, Cox, supra note 43, at 322-23, where the author states:

> If proof that such discussions took place would permit a jury to infer that there was an illegal combination, the *Pennington* case will drive the discussions underground or else force employers and unions to engage in wage negotiations without canvassing some of the most important economic consequences.

[47] The concurring opinion sets forth the elements of guilt as follows:

> On the new trial the jury should be instructed that if there were an industry-wide collective bargaining agreement whereby employers and the union agreed on a wage scale that exceeded the financial ability of some operators to pay and that if it was made for the purpose of forcing some employers out of business, the union as well as the employers who participated in the arrangement with the union should be found to have violated the Sherman Act.

381 U.S. at 672-73.

other hand, required only the showing of a commercially damaging result.[48]

In *Ramsey* the plaintiffs, in support of their allegation of implied agreement between the UMW and the Operators Association, produced evidence that bargaining subsequent to 1950 between the Union and the Operators Association had been very peaceful, contrary to the virulent conflict that had occurred prior to 1950;[49] that substantial increases in wages, welfare fund royalties and other benefits negotiated between the UMW and the Operators Association since 1950 had virtually made mechanization essential to survival in the industry;[50] that profits of the alleged conspiratorial mines had increased while those of the smaller mines had decreased;[51] that the UMW had purchased a controlling interest in the Western Kentucky Coal Company at a net loss of eight million dollars and had utilized its control of the company to participate in bidding in the Tennessee Valley Authority coal market;[52] and that the UMW had pursued a policy of striking mines which refused to accept terms of the Wage Agreement, resulting in violence and destruction to the property of the smaller mine operators.[53]

The trial judge, while finding that each of the above facts had been sufficiently proven, held that none of them could be considered per se violative of the Sherman Act.[54] The plaintiffs contended that these facts, viewed as a whole and in connection with the Wage Clause, provided sufficient evidence of an illegal conspiracy. However, the trial judge, while agreeing that the evidence must be viewed as a whole for purposes of inferring a conspiracy,[55] held that the plaintiffs had failed to meet the evidentiary requirement of Section 6 of the Norris-LaGuardia Act which necessitates a "clear proof" showing that these facts did, indeed, amount to an illegal conspiracy.[56] The trial judge did state, however, that, "[w]ere this case being tried upon the usual preponderance of the evidence rule applicable in civil cases, the Court would conclude that the U.M.W. did so impliedly agree."[57]

The Supreme Court in *Ramsey* took issue with the evidentiary standard attributed to section 6 by the lower courts. In holding that the statute requires the "usual preponderance of the evidence" standard, rather than that of "clear proof," in order to establish a con-

[48] See Zimmer and Silberman, supra note 39, at 869. Discussing Justice White's opinion in *Pennington*, the trial judge in *Ramsey* concluded: "[W]hile Justice White would require proof of the conspiracy between the union and the favored employers, he would appear to require no proof that the purpose was to put other employers out of business." 265 F. Supp. at 398.

[49] Id. at 407-08.

[50] Id. at 433-34.

[51] Id. at 409-10.

[52] Id. at 412-22.

[53] Id. at 427-29.

[54] Id. at 408, 409, 422, 429-30, 433.

[55] Id. at 431.

[56] Id. at 412.

[57] Id.

spiracy, the Court found that the plaintiffs produced "additional evidence" of the conspiracy sufficient to satisfy that requirement as expressed by Justice White in *Pennington*.[58] Thus, *Ramsey* clarifies the evidentiary problem posed in *Pennington* by indicating that the "additional evidence" necessary for establishing a conspiracy is that which creates an inference under the usual preponderance standard.

In *Ramsey*, the Court was faced for the first time with the question of whether Section 6 of the Norris-LaGuardia Act applies to proof of the alleged illegal acts as well as to the agency relationship in labor disputes. Section 6 was considered to some extent in *United Brotherhood of Carpenters and Joiners of America v. United States*,[59] and in *United Mine Workers of America v. Gibbs*,[60] but in each of these cases the Court restricted itself to the question of proper application of the statute to the agency issue. In *Carpenters*, a criminal prosecution of the union, the Court noted language in the legislative history of section 6 which states that the statute was not "a new law of agency," but rather a rule of evidence designed to properly enforce the common law rule of agency where a labor dispute is involved.[61] *Carpenters* held that the purpose and effect of section 6 was

> to relieve organizations, whether of labor or capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration.[62]

In *Gibbs*, a civil action for damage to property allegedly caused by union violence, the Court failed to mention any connection between the standard of proof required by the statute and the acts of violence themselves. The Court stated that, "[w]hat is required is proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts . . . ."[63] It is noteworthy that the *Gibbs* Court remanded the case on the issue of proof of agency while leaving undisturbed the finding that the violence had, in fact, occurred. This ruling supports the inference that the Court did not interpret section 6 as being applicable to proof of the illegal acts. But the analogy to *Ramsey* is tenuous, since *Gibbs*, although a civil case, was not concerned with the antitrust laws.

While the legislative history of section 6 is rather vague, its

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[58] See discussion at p. 388 supra.
[59] 330 U.S. 395 (1947).
[60] 383 U.S. 715 (1966).
[61] 330 U.S. at 402-03.
[62] Id. at 403.
[63] 383 U.S. 739.

congressional intendment may be inferred from the judicial treatment of labor disputes prevailing at the time of its enactment. The Norris-LaGuardia Act, enacted in 1932, severely restricted the then-increasing number of federal court injunctions in actions involving genuine labor disputes.[64] The practice of many courts during this violent period in the history of the labor movement was to hold the union responsible for the conduct of individuals in whom was lodged no authority to wield the power of the union.[65] By overextending the doctrine of conspiracy, in which the illegal act of one conspirator is charged to all his co-conspirators, isolated acts of individuals were imputed to the union, even though such individuals were believed in some instances to be *agents provocateurs*, or to have held spurious membership in the union during a strike.[66] There is little doubt that section 6 was aimed at curbing such use of the law of agency, as well as at clarification of that law, both necessitated by disagreement among the lower courts regarding this issue.[67] Congress further indicated that the underlying purpose of Section 6 of the Norris-LaGuardia Act was to define the law of agency in labor dispute situations when, in 1947, it enacted the Taft-Hartley Act.[68] Section 301(e)[69] of the Taft-Hartley Act "expressly provides that for purposes of that statute . . . the responsibility of a union for the acts of its officers and members is to be measured by reference to ordinary doctrines of agency, rather than the more stringent standards of § 6."[70]

In his dissenting opinion in *Ramsey*, Justice Douglas, joined by Justices Black, Harlan, and Marshall, reiterated the position he had taken in *Pennington*: the union must be shown to have acted with the "purpose and effect of driving the small, marginal operators out of business";[71] that section 6 requires clear proof that the "purpose

[64] See, Meltzer, Labor Unions, Collective Bargaining, and the Antitrust Laws, 32 U. Chi. L. Rev. 659, 665 (1965).

[65] Great Northern Ry. Co. v. Machinists Local 287, 283 F. 557 (D. Mont. 1922); Alaska S.S. Co. v. Int'l Longshoremen's Ass'n of Puget Sound, 236 F. 964 (W.D. Wash. 1916); and Southern Ry. Co. v. Machinists Local 14, 111 F. 49 (W.D. Tenn. 1901).

[66] See Justice Frankfurter's dissent in *Carpenters*, 330 U.S. at 418.

[67] During Senate hearings on the Norris-La Guardia Act, the Senate Subcommittee reported that:

> There has been a distinct conflict of opinion in the courts as to the degree of proof required. Mere ex parte affidavits establishing a certain amount of lawless conduct in the prosecution of a strike have been held in some instances to establish a "presumption" that the entire union and its officers were engaged in an unlawful conspiracy; and, on the other hand, other courts have declined thus to substitute inference for proof . . . .
>
> It is appropriate and necessary to define by legislation the proper rule of evidence to be followed in this matter in federal courts. That is the only object of section 6.

S. Rep. No. 163, 72d Cong. 1st Sess. 20-21 (1932), as quoted in 330 U.S. at 419 n.2.

[68] 29 U.S.C. §§ 141-97 (1970).

[69] 29 U.S.C. § 185(e) (1970).

[70] 383 U.S. at 726. See also, Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 304 n.17 (1962).

[71] 401 U.S. at 317.

of the union was . . . to do in one or more operators."[72] The basis of the argument is that, even if it is shown that the bargaining officers of the union acted with the required predatory intent, it would be both unfair and contrary to the will of Congress to impute illicit motive to the union and its members, absent clear proof that the officers were authorized to act with predatory intent and in concert with the non-labor group. The dissenters in *Ramsey* reasoned that without such clear proof the UMW officers who had concluded the Wage Agreement and had directed the subsequent activities of the union must be considered to have been authorized only to pursue, unilaterally, the lawful objective of obtaining an industry-wide uniform wage scale.[73]

The arguments of the dissent are not without merit. If the purpose and effect of section 6 is to relieve union members of liability for lawless acts perpetrated by individual union officers, absent clear proof of union authorization, participation in, or ratification of such acts, as interpreted by *Carpenters*;[74] and, if in order to be deemed lawless the acts must have been committed with the purpose of forcing some employers out of business, as asserted by Justice Douglas in *Pennington*;[75] then, it seems implicit that section 6 requires clear proof that the union itself, that is, all members of the union, possessed predatory intent or knowledge of the union officers' predatory intent. Therefore, according to the rationale of the dissenting opinion, the plaintiffs in *Ramsey* should be required to show by clear proof not only that the union officers were authorized agents of the union, but also that the union participated in the conspiracy. The plaintiffs would thus have to offer clear proof that the *union*, not just its officers, had knowledge of a scheme designed to eliminate certain mine operators; arguably, the plaintiffs would also have to offer clear proof that a conspiracy existed. Practically speaking, it would appear impossible to produce clear proof that the union authorized the conspiracy, absent explicit authorization granted in the union's bylaws.

Acceptance of the dissenting argument would reinstate labor's antitrust exemption, which was removed by *Pennington*. As a result, only a procedural difference would separate the pre-*Pennington* rule and the post-*Ramsey*-dissent rule. In the former, owing to the exemption from antitrust, the union was able to have the complaint dismissed for failure to state a claim upon which relief could be granted;[76] in the latter, since the exemption is removed and a more stringent evidentiary standard is applied, the union would be required to wait until evidence is presented before moving for a directed verdict.[77]

It is submitted that, although *Ramsey* serves to illuminate the

[72] Id. at 319-20.

[73] Unilateral pursuit of this objective is lawful as confirmed by *Pennington*, 381 U.S. at 665 n.2.

[74] See discussion at p. 390 supra.

[75] 381 U.S. at 672-75.

[76] Fed. R. Civ. P. 12(b)(6).

[77] Fed. R. Civ. P. 50(a).

evidentiary issue regarding Section 6 of the Norris-LaGuardia Act, national policy in labor-antitrust violation situations is in need of clarification. This submission is supported by noting the three way division of the *Pennington* Court and the number of justices dissenting in *Ramsey*. To resolve this situation, Congress must clarify its intent and the national policy by introducing legislation defining the limits of labor's exemption from antitrust liability. Union and employer representatives need to know what subjects they may discuss at the bargaining table, and what activities they may pursue, without fear of antitrust liability. Absent such legislation, the collective bargaining process is in danger of being driven underground, in contravention of the policy of fostering that process as expressed in Section 2 of the Norris-LaGuardia Act.[78]

The effect of the Court's decision in *Ramsey* is to reaffirm, clarify, and give force to the *Pennington* doctrine and to define the evidentiary standard required by Section 6 of the Norris-LaGuardia Act. However, congressional action is needed to resolve the status of labor's exemption from antitrust liability in order to remove the danger which existing ambiguities present to the collective bargaining process.

FRANCIS J. CONNELL

Trade Regulation—Antitrust Immunity—Quasi-Governmental Action—*Hecht v. Pro-Football, Inc.*[1]—The Armory Board of the District of Columbia, a quasi-public body empowered to operate and maintain federal government facilities in the district,[2] was authorized by the federal Stadium Act[3] to build, operate and maintain an athletic stadium.[4] Accordingly, under a contract with the Department of Interior which previously had purchased the site, the Board built R.F.K. Stadium and leased it to Pro-Football, Inc., the corporate organization of the Washington Redskins football team.[5] The lease provided that at no time during a thirty year term would the Armory Board rent the stadium to any other professional football team.[6] Relying upon this exclusive covenant, the Board refused to lease

[78] 29 U.S.C. § 102 (1970).

[1] 444 F.2d 931 (D.C. Cir. 1971), petition for cert. filed, 40 U.S.L.W. 3081 (U.S. July 23, 1971) (No. 71-121).

[2] 2 D.C. Code § 1706 (1967).

[3] 2 D.C. Code §§ 1720-28 (1967).

[4] 2 D.C. Code § 1720 (1967).

[5] 444 F.2d at 932-33.

[6] 444 F.2d at 933. The exclusive covenant provided, in part, that:

> [The Armory Board] . . . shall have the right to lease or otherwise permit the use and occupancy of the Stadium during any period . . . provided that at no time during the term of this Lease Agreement shall the Stadium be let or rented to any professional football team other than the Washington Redskins.

Id. at 933.